IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5278 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DANA KARSAN MANVAR

Versus

DIVISIONAL CONTROLLER

Appearance:

MR. NAGESH SOOD for M/S TRIVEDI & GUPTA for Petitioner

MR PRANAV G DESAI for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/08/2000

C.A.V. JUDGEMENT

Against the award made by the Presiding Officer, Labour Court in Reference (LCR) No. 271 of 1093, the employee has preferred this application as the employee was not awarded backwages. However, the respondent,

Gujarat State Road Transport Corporation (hereinafter referred to as the Corporation) was ordered to reinstate the workman to his original post with continuity of service.

2. Facts leading to the present proceedings are as under:-

2.1 The petitioner was working as Art. C. Mechanic with the respondent Corporation. The petitioner remained absent without leave from 8.3.1980 to 6.6.1980. He was served with charge sheet and was asked to remain present before the Inquiry Officer. Despite several intimations sent by Registered Post, the petitioner did not remain present before the Inquiry Officer, and, therefore, inquiry was held exparte.

2.2 On recording the evidence, misconduct was primafacie established, and, therefore, second show cause notice was given along with the findings to the employee, but he did not bother to give the reply. Thus, after affording an opportunity of hearing to the employee, and by following the principles of natural justice, the decision was taken whereby his services were terminated.

3. It was contended before the Labour Court that he proceeded on leave and submitted a leave report with medical certificate. It was further contended that his leave was extended and that reasonable opportunity was not given to defend himself. it was further contended before the Labour Court that the second show cause notice was also not served.

4. On behalf of the respondent Corporation, it was pointed out that the Reference is made after undue delay; The fact that the Reference was made after a long time was a factor indicating that the employee was not interested in reinstatement; That the employee remained absent without leave on previous occasions also, and he did not improve eventhough opportunities were given to him. With regard to sickness it has been denied by the respondent Corporation that he was ill or that he proceeded on leave after submitting a leave report along with medical certificate. The Labour Court, in paragraph 5 of the judgment, has observed that the documents Exh. 12 to 24 were produced before the Labour Court indicating that the employee remained absent without leave and several notices were served on the employee and the acknowledgments have been produced, vide Exh. 13 to 16. Rojkam Exh. 17 and 19 were also produced. As he did not remain present in the inquiry, he has no right to make

any grievance that the inquiry was held exparte. When reasonable opportunity of defending himself was given, and if he has not availed of that opportunity, he cannot make any grievance. It was pointed out before the Labour Court that despite several notices, he has not bothered to remain present. Inquiry report At Exh. 20 discloses that the Reporter L.D. Vora was examined in the inquiry wherein he has pointed out that the respondent remained absent without leave. Second show cause notice along with the findings and the acknowledgment of the workman were also produced collectively, vide Exh.21. There was no reply by the employee to the second show cause notice.

5. The Labour Court arrived at a conclusion that the medical certificate was produced only before the Court. The Labour Court has specifically arrived at a finding in paragraph 8 that "it is true that the workman did not submit such certificate to the Corporation. Though he stated that he has given "unfit certificate" to the Corporation he has not proved this fact". It seems that the medical certificate which was produced for the first time in the Court, and it was not duly proved; And though it was not duly proved, the Labour Court has taken the liberal view.

6. Earlier action taken against the petitioner employee was brought to the notice of the Labour Court. The workman remained absent from 1.8.1980 to 11.2.1981. In that case also, the Labour Court, in Reference LCR No. 952/82, reduced the punishment and backwages were withheld. The Labour Court arrived at a conclusion in the instant case (in paragraph 9) that:

> "In the present case the workman intentionally did not take part in the departmental enquiry and did not co-operate. The record does not show that even after 6-6-80 the workman was willing to report for duty. Eventhough he was served with charge sheet on 7-6-1980 he could have shown his bonafide by submitting report that he was physically fit to resume duty and he was prepared to join duty. "

7. The Labour Court held that the order of dismissal was disproportionate and made an order under section 11.A of the Industrial Disputes Act reinstating the workman to his original post with continuity of service but without backwages.

8. Learned advocate appearing for the workman submitted that in the instant case the Labour Court has

seriously erred in not accepting the contentions raised by the employee that he infact forwarded the certificate.

9. Learned counsel for the petitioner, for the purpose of his contention that the workmen is entitled to get backwages, has sought to place reliance on the decision of the Apex Court in the case of RAMESH CHANDER & ORS. vs. DELHI ADMINISTRATION & ORS. reported in 1997-III-LLJ (Suppl) SC 509. In that case, the appellant before the Central Administrative Tribunal were constables of 9th Battalion, Delhi Police. The appellants, along with one Shri Satyaprakash, while working in the area of police station Mangole Puri, New Delhi, picked up one Mohan Lal and extracted a sum of Rs.365/- giving him a threat of arrest stating that he was a smack drug addict. Charges were proved in the departmental inquiry and were ultimately dismissed from service by order dated 23rd Sept. 1988. Mohan Lal, the alleged victim filed prosecution against the appellants and Satya Prakash. The criminal case ended in a "clean acquittal", acquitting all the appellants and Satyaprakash. The appellants before the Apex Court submitted representations before the Department for their reinstatement in view of the judgment of the Sessions Court but that was rejected. Thereafter, they preferred O.A. No. 1583/89 before the Tribunal and prayed for reinstatement. Satya Prakash filed a separate application before the Tribunal being O.A. No. 1637/90. The Tribunal, by its order dated December 14, 1993 quashed the order made by the Disciplinary Authority as well as the appellate authority. Thus, the said Satya Prakash was reinstated in service from the date of his dismissal. He was permitted to draw pay and allowances admissible under the Rules from the date of dismissal together with all consequential benefits.

10. In the matter of the appellants, the Tribunal declined to award backwages on the ground that the application filed before the Tribunal in August 1989 was not amended challenging the later order passed by the Revisional Authority on 21st February 1990. The appellants did challenge the order of dismissal dated Sept. 23, 1988 which was confirmed in appeal by the order of Additional Commissioner of Police dated March 2, 1989. In this circumstance, the Apex Court held as under:

> "In our opinion, the reason stated by the Tribunal to deny back wages to the appellants is an irrelevant one and rests on very fragile foundation. Moreover the consequential order

passed in the case of Shri Satya Prakash (Annexure P-1) dated December 14, 1993, was not adverted to by the Tribunal. On facts, when the appellants as well as Shri Satya Prakash were proceeded against both departmentally and by way of criminal prosecution on similar charges and all of them have been acquitted by the Sessions Court and the Tribunal also held that the punishment imposed on all of them is based on "no evidence" and not in accordance with law, in the absence of very relevant and exceptional circumstances, the consequential order should also be of similar import in both the cases. If it is not so, it will be arbitrary and unfair. No exceptional circumstances are stated by the Tribunal. We, therefore, hold that the Tribunal acted arbitrarily and unreasonably in denying back wages and consequential benefits to the appellants".

11. The Apex Court, in the aforesaid judgment, has not directed to pay backwages in all the cases. Learned advocate has sited the judgment which has no relevance. On the facts of the case and view taken earlier granting benefits on the same set of circumstances, the subsequent order was held arbitrary and unreasonable.

12. Learned Advocate has sited another decision of the Division Bench of this High Court in the case of S.G. GOWAMI vs. SHAIKH ABDULHAKIM ASMADMAHAMAD reported in 1985(1) LLJ 281. In the aforesaid decision, this Court has not dealt with a situation similar to the instant case before us, and hence this judgment also has no relevance.

13. Learned advocate has relied on the judgment of a Division Bench of the Bombay High Court in the case of C.P. SINGHANIA vs. THE MAHARASHTRA STATE CO-OP. MARKETING FEDERATION LTD. reported in 1995 (3) LLJ (SUPPL) 278. In that case, the concerned employee was arrested on the charge of misappropriation. However, the Judicial Magistrate found that the employee was not guilty of the charge levelled by the police. In that case, there was no notice served and no steps were taken departmentally. In paragraph 3, the Division Bench specifically observed that the Labour Court also held that the petitioner (employee) was removed from service only because the police arrested him and the removal was without any notice upon the petitioner. In that case, it was argued that the employee was not entitled to order of reinstatement or backwages because there was ample

material to justify the contention of the employer regarding loss of confidence. The whole basis of removal of the petitioner before the Bombay High Court was that the police had arrested him on the charge of misappropriation. The Division Bench held that in view of the fact that the employee was acquitted, the arrest can have no impact upon the rights of the petitioner. Under the circumstances, this decision sited by the learned advocate for the petitioner in the instant case is of no assistance to him. In the instant case, the Tribunal has considered the fact that the employee initially did not participate in the departmental inquiry and did not co-operate. Even he did not submit report about his sickness. The Tribunal examined the powers under section 11.A of the ID Act and the punishment has been reduced and his backwages has been withheld with a direction to take the petitioner in service to his original post with continuity of service. The Tribunal has considered all the aspects and, therefore, it cannot be said that the order of the Tribunal required interference.

14. It appears that the learned advocate wanted to argue this petition under Article 227 as if it is an appeal. In the instant case, the workman remained absent for a long period from 8.3.1980 to 6.6.1980 and did not furnish any leave report or fitness certificate to resume the duty; He did not take part in the proceedings despite the process of inquiry served on him; Even after serving charge sheet, he did not submit any report that he was physically unfit. Considering all these aspects, the Labour Court has passed the impugned order.

15. The Apex Court in the case of MOHD. YUNUS vs. MOHD. MUSTAQUIM reported in AIR 1984 SC 38 held as under:

> "A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227.
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> The supervisory jurisdiction conferred on the High Courts udder Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in

> disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

16. In view of what is stated hereinabove, the petition is required to be rejected, and is hereby rejected. Rule is discharged. No order as to costs.

(B.C. PATEL, J.)

csm./